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No. 131] NEW DELHI, TUESDAY, MAY 1, 1956

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 18th April 1956

S.R.O. 1015.—WHEREAS the election of Shri H. M. Channabasappa, as a member of the Mysore Legislative Assembly from the Periyapatna Constituency of that Assembly, had been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri K. P. Karivappa s/o Shri Puttegowda Vokkaligar, resident of Komalapur, Bettadapura Hobli, Periyapatna Taluk, Mysore District;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has in exercise of the powers conferred on it by section 109 of the said Act, granted leave to the petitioners to withdraw the said petition;

AND WHEREAS the said Tribunal in pursuance of the provisions of clause (c) of sub-section (3) of section 110 of the said Act, allowed (1) Shri Patel A. Venkate Gowda s/o Patel Chaluve Gowda, (2) Shri T. Venkataramana Gowda s/o Shri Thammanna Gowda, (3) Shri Venkate Gowda s/o Shri Doddaputtgowda, residents of Sarvamanya Inam Haleyr, Chunchanakatte Hobli, Krishnarajanagar Taluk and (4) Shri Mote Gowda s/o Shri Ere Gowda resident of Kuppe Village, Chunchanakatte Hobli, Krishnarajanagar Taluk, to be substituted as petitioners in place of the original petitioner;

AND WHEREAS the said Tribunal has, in pursuance of the provisions of section 103 of the said Act, sent a copy of its order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MYSORE, BANGALORE

Bangalore, dated 31st March, 1956

PRESENT:

1. Sri T. Gurunanjiah. B.A., B.L., (District and Sessions Judge, Civil Station, Bangalore) Chairman, Election Tribunal, Mysore, Bangalore.
2. Sri N. R. Jaya Rao. M.A., LLB, (Retd. District Judge) Judicial Member, Election Tribunal, Mysore, Bangalore.
3. Sri E. Kanakasabhapathy. B.A., B.L., Advocate-Member, Election Tribunal, Mysore, Bangalore.

ELECTION PETITION No. 30 OF 1954

Petitioner.—SRI K. P. Kariyappa, son of Puttegowda, Vokkaligar, resident of Komalapur, Bettadapura Hobli, Periyapatna Taluk, Mysore district. (Since withdrawn).

Intervening Petitioners:—

1. Patel A. Venkate Gowda, son of Patel Chaluve Gowda.

2. T. Venkataramana Gowda son of Thammanna Gowda.

3. Venkate Gowda, son of Doddaputtegowda.

All residents of Sarvamanya Inam Haleyr, Chunchanakatte Hubli, Krishnarajanagar Taluk.

4. Mote Gowda, son of Ere Gowda, resident of Kuppe Village, Chunchanakatte Hobli, Krishnarajanagar Taluk.

Vs.

Respondent.—Sri H. M. Channabasappa, Nandinathapura, Periyapatna Taluk, Mysore District.

JUDGMENT

1. This election petition was preferred originally by Sri K. P. Kariyappa challenging the election of the respondent Sri H. M. Channabasappa in the bye-election to the Legislative Assembly, Mysore held in the Periyapatna Constituency on 9th October 1954. At the bye-election Sri K. P. Kariyappa and Sri H. M. Channabasappa were the only two duly nominated candidates. At the time of the scrutiny of the nomination papers and on the objections raised by Sri H. M. Channabasappa, the Returning Officer, Periyapatna Legislative Assembly Constituency rejected the nomination paper of Sri K. P. Kariyappa on the ground that Sri K. P. Kariyappa was disqualified to stand as a candidate under Section 7(1) of the Representation of the People Act, 1951, because in the trial of the Election Petition No. 135/1952 Sri K. P. Kariyappa had been found guilty of corrupt practices specified in Section 123 of the Representation of the People Act, 1951. After this rejection as there was only one candidate, viz. Sri H. M. Channabasappa, the Returning Officer declared in pursuance of Section 53(2) of the Representation Act that the respondent was duly elected by the Periyapatna Legislative Assembly Constituency.

2. Sri K. P. Kariyappa has challenged this election of the respondent on the ground that the rejection of his nomination paper by the Returning Officer was improper and not in accordance with law. His contention is that as the Tribunal in E.P. No. 135/1952 did not issue any notice to him under Section 99 of the Representation of the People Act, 1951, and did not record any finding on issue No. 10, the observations made in paras. 70 to 73 and 110 (c) and 111 cannot in law amount to any finding that he is guilty of corrupt or illegal practices such as to make him incur the disqualification under Section 7 (a) of the Act. He has further contended that in the absence of any notice to him, any finding given by the Tribunal against him cannot bind him so as to make him incur any disqualification as such a course would be opposed to the well known principles of natural justice, especially as he was no party to the election petition No. 135 of 1952.

3. On behalf of the respondent it is contended that the paras. in the judgment referred to, contain findings under Section 99(a) (i) and that therefore required no separate notice under the proviso. He further contends that once there has been a finding that a corrupt practice has been committed by an agent, it is a sufficient finding to disqualify the agent under Section 7 of the Representation of the People Act. Lastly, it is contended that even if Section 99 (a) (ii) applied, separate notice under the proviso was not necessary when the agent concerned knew of the allegations and took part in meeting such allegations during the trial.

4. On these contentions the following issues were framed on 18th February, 1955:

Issues—

- (1) Has or has not the order of the Election Tribunal in Election Petition No. 135/1952 entailed disqualification of the petitioner for membership of the Mysore State Legislative Assembly under Section 7(1) of the Representation of the People Act (43 of 1951)?
- (2) Is the rejection of the nomination paper of the petitioner by the Returning Officer illegal?
- (3) Is the election of the respondent liable to be set aside as being void?
- (4) To what relief, if any, is the petitioner entitled?

5. The parties having stated that they had no evidence to tender on the issues framed, the case was posted for arguments. In the meanwhile on 19th February, 1955, Sri K. P. Kariyappa, filed an application under Section 109 of the Representation of the People Act, 1951, praying for leave to withdraw the petition. After hearing the respondent, permission sought for was granted and under Section 110, Sub-section 3(b) notice of the withdrawal was duly published in the Mysore Gazette. Within the time prescribed four persons claiming to be voters in the Periyapatna Constituency presented a petition on 11th April, 1955, to be substituted in the place of the original petitioner Sri K. P. Kariyappa, and to be permitted to continue the proceedings. As this application was in time and was otherwise in accordance with the provisions of Section 110, sub-section 3(c) of the Representation of the People Act, 1951, and as the respondent raised no objections, the intervening petitioners were brought on record and substituted in the place of the original petitioner and the proceedings continued. After arguments in the case were heard in part on 17th and 18th June, 1955, at Mysore, it was felt by the Tribunal that it was necessary in the interests of justice to hear the Advocate-General on the questions of law raised and accordingly action was taken under Section 89 of the Representation of the People Act. The Advocate-General having pleaded that he had appeared for Sri S. M. Mariyappa in Election Petition No. 135, of 1952, the learned Assistant Advocate-General deputed by him was duly heard. Subsequently during further arguments addressed by the respective counsels for the parties in this case, it was felt that in consequence of certain observations made by the Supreme Court in *Tirath Singh vs. Bachittar Singh* and others (C.P. No. 21 of 1955), a certified copy of which judgment was produced before the Tribunal, it was necessary to go into the question whether as a matter of fact Sri K. P. Kariyappa, had constructive notice of the allegations made against him in E.P. No. 135/1952, and whether he had actually opportunity to defend himself in respect of those allegations before the Election Tribunal passed their judgment Exhibit P-4. An additional issue was therefore framed as follows:—

“Had the original petitioner Sri Kariyappa, notice of the allegations of corrupt and illegal practice made against him in the petition E.P. 135, of 1952, and had he opportunity to meet those allegations?”

6. Four witnesses were examined on behalf of the respondent and one witness was examined on behalf of the intervening petitioners. Sri K. P. Kariyappa, was examined as court witness. Four exhibits were marked in the case.

7. The first issue framed in the case is by far the most important one. The point for determination in this issue is whether the order of the Election Tribunal in E.P. No. 135, of 1952, has entailed disqualification for the original petitioner Sri K. P. Kariyappa, for membership of the Mysore State Legislative Assembly under Section 7(a) of the Representation of the People Act, 1951 which reads as follows:—

“A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

- (a) if, whether before or after the commencement of the Constitution, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice which has been declared by section 139 or section 140 to be an offence or practice entailing disqualification for membership of Parliament and of the Legislature of every State, unless such period has elapsed as has been provided in that behalf in the said section 139 or section 140, as the case may be:”

The contention of the respondent which was accepted by the Returning Officer was that in the trial of the Election Petition No. 135/1952, which was proceedings initiated by one Shankare Gowda, an elector in the Periyapatna Legislative Assembly Constituency, for questioning the validity of the election of one Sri S. M. Mariyappa, held in the said constituency during General Elections, in 1952, Sri K. P. Kariyappa, was found to be an agent of Sri S. M. Mariyappa, and as such agent to have been guilty of corrupt practices such as bribery, hiring of vehicles for conveying electors to the polling stations and publishing false statements of fact against the respondent Sri H. M. Channabasappa, practices which are major corrupt practices specified in section 123 and declared by section 140 of the Representation of People Act, 1951, to entail disqualification for membership of Parliament and the Legislature of every State.

8. In order to appreciate this contention it is necessary to examine the proceedings in E.P. No. 135, of 1952, and see if in the judgment of the Tribunal, there are findings against Sri K. P. Kariyappa, within the meaning of Section 7(a) of the Representation of the People Act. Exhibit P-1, is the Election Petition of Sri Shankare Gowda, in E.P. No. 135, of 1952. To this was appended three lists (1) of particulars of corrupt and illegal practices alleged to have been committed, (2) of persons who had committed such practices, and (3) the places and dates where and when they were committed. The second list contained names of 28 persons of whom the first was the candidate Sri S. M. Mariyappa, himself and the second was Sri K. P. Kariyappa, of Komalapur, who is admittedly the original petitioner in the present case. Exhibit P-2 is the further and better particulars regarding the corrupt and illegal practices alleged. The allegations against Sri K. P. Kariyappa made in Ext. P-2, are contained in paras. 4, 5, 17, 21 and 22 under the heading 'bribery' and in para. 4 under the heading 'payment of cart hire.' Sri S. M. Mariyappa, who was the first respondent in E.P. No. 135, of 1952, denied that Sri K. P. Kariyappa, was his agent and further denied that Sri K. P. Kariyappa, as agent had committed any of the corrupt practices as alleged. Neither Sri K. P. Kariyappa, nor any of the other agents of Sri S. M. Mariyappa, were implicated as parties to the Election Petition No. 135 of 1952. The only persons implicated as respondents in that petition were the successful candidate Sri S. M. Mariyappa, and the only other candidate Sri H. M. Channabasappa. On behalf of Sri Mariyappa, the first respondent in the case Sri K. P. Kariyappa, was examined as a witness and he was first R.W. 68. Exhibit P-4, is the judgment of the Election Tribunal in E.P. No. 135/1952.

8(a). Para. 70 of this judgment deals with the allegation in para. 4 of Exhibit P-2, under the heading 'bribery'. The item of 'bribery' alleged was a promise on the part of Sri K. P. Kariyappa, as agent of Sri S. M. Mariyappa, to Yalakki Gowda, examined as P.W. 71, in the case that timber would be supplied and Rs. 300 paid for the construction of Remamanduram in Edigara Keri of Periyapatna Town if the people of the Keri voted for the first respondent, Sri S. M. Kariyappa. To prove the allegation of 'bribery', Yalakki Gowda was the only witness examined as P.W. 71. Against this two witnesses were examined, viz. first R.W. 57, and first R.W. 68; the latter is Sri K. P. Kariyappa and the first R.W. 67, is described in para. 71 of the judgment as the father-in-law of first R.W. 6. After considering the evidence, the conclusion arrived at by the Tribunal is that this item had been proved.

8(b). The other instance of 'bribery' alleged against Sri K. P. Kariyappa which is in para. 5 of Exhibit P-2, is dealt with in paras. 72 and 73, of the judgment, Exhibit P-4. The 'bribery' alleged was an offer of timber and money on the part of the first respondent Sri Mariyappa, and his agent Sri K. P. Kariyappa to the residents of Upper Keri, in Periyapatna Town for improving their Ramamanduram with the object of securing votes of the people in that Keri for the first respondent. The conclusion arrived by the Tribunal on a consideration of evidence adduced regarding this item is stated in the last sentence of para. 73 which reads—

"The allegation as against the first respondent is substantiated."

8(c). In para. 110 of the judgment Exhibit P-4, the Tribunal considered the allegations about the payments of cart hire for conveying voters to certain polling booths. The allegations against Sri K. P. Kariyappa are dealt with in sub-para. (c) of this para. 110 as well as in para. 111 of the judgment. The allegation made against Sri K. P. Kariyappa was that he had offered Rs. 10 to one Kari-gowda, P.W. 79, three or four days before the election for purposes of conveying voters to Kandagala polling booth. On the evidence adduced the Tribunal found this allegation proved and in para. 111 the finding recorded so far as it is relevant to the present case is that the first R.W. 68 viz. Sri K. P. Kariyappa as agent of Sri Mariyappa had attempted to pay cart hire for conveying voters to the polling booths.

8(d). As regards the allegation of publishing false statements of fact against Sri H. M. Channabasappa, the matter is dealt with by the Tribunal in paras. 131 and 132 of the judgment, Exhibit P-4. This was the subject matter of the fourth issue in the case and in para. 132 the finding given was that the first respondent, viz. Sri S. M. Mariyappa and his agents referred to by the witnesses for the petitioner have published false statements of fact in relation to the personal character or conduct of the second respondent Sri H. M. Channabasappa. In paras. 131(b) a list is given showing which particular witness for the petitioner had involved which particular agent of the first respondent and in this we find first R.W. 68 also included.

9. There is no doubt whatever that the acts found to have been proved to have been committed by Sri K. P. Kariyappa as agent of Sri Mariyappa in

Exhibit P-4 and discussed above amount to major corrupt practices specified in section 123 of the Representation of the People Act. Section 140 of the Act declares such corrupt practices to entail disqualification for membership of Parliament and of the Legislature of every State, the period of such disqualification being counted as prescribed in sub-section 2 of section 140 from the date on which the finding of the Election Tribunal as to such practices takes effect under this Act. Section 107 of the Act declares that an order of the Tribunal under Section 98 or Section 99 shall not take effect until it is published in the Gazette of India under Section 106. It is very important to note in this connection that though the Tribunal in E.P.No.135/1952 found the corrupt practices alleged against Sri K. P. Kariyappa as agent proved, they took no further proceedings under Section 99 of the Representation of the People Act to name Sri K. P. Kariyappa as a person proved at the trial to have been guilty of corrupt practices, though issue No. 10 in the case raised the question as to who were the person or persons that were responsible for the commission of any corrupt or illegal practice alleged. The order made by the Tribunal on this point is in para 136 of their judgment Exhibit P-4 and it reads as follows:—

"As the first respondent himself was mainly responsible for the commission of the corrupt practices as proved, we do not feel called upon to take any action against the agents of the first respondent, who have committed certain corrupt practices, under Section 99 of the Representation of the People Act, 1951, and this is our finding on the 19th issue."

The question, therefore, to be considered is whether in the circumstances mentioned, we can say that in the proceedings in E.P.135/1952 the Tribunal has found Sri K. P. Kariyappa to be guilty of the corrupt practices alleged against him, so as to make him suffer the disqualification under Section 7(c) read with Section 140 of the Representation of the People Act. A finding by the Election Tribunal that a person is guilty of corrupt practice is essential and a mere statement of facts from which guilt might be inferred is insufficient. (*Grant vs. Pagham*, Overseer of, 3C.P.D. 80—cited in *Parker's Election Agent and Returning Officer* at page 45). When the judgment Exhibit P-4 is carefully examined, what is seen is that the Tribunal held certain allegations of corrupt practices made against Sri K. P. Kariyappa as agent of Sri S. M. Mariyappa to have been proved but they did not proceed further and record a finding that Sri K. P. Kariyappa was guilty of the major corrupt practices alleged. If the Tribunal intended to record such a finding against Sri K. P. Kariyappa who was not a party to the petition before them, they had to follow the procedure prescribed under Section 99 of the Representation of the People Act. But in para 136 of the judgment it is clear, the Tribunal expressly abstained from following this procedure under section 99 because they found Sri S. M. Mariyappa himself to have been mainly responsible for the commission of the corrupt practices as proved and thought that this finding was sufficient to dispose of the case before them. In this view we are of opinion that in the proceedings in E.P.135/1952 there has been really no finding that Sri K. P. Kariyappa was guilty of corrupt practices so as to make him incur the disqualification under Section 7 of the Representation of the People Act.

10. It was argued by the learned counsel for the respondent that while Section 99(1)(a)(i) deals with the corrupt or illegal practices committed by, or with the connivance of the candidate or his agent, Section 99(1)(a)(ii) deals with other persons who have been proved at the trial to have been guilty of any corrupt or illegal practice. He, therefore, urged that the notice prescribed in the proviso was necessary only in the case of persons other than the candidate or his agent and that therefore a finding that a candidate or his agent has been guilty of a corrupt or illegal practice can be given by the Tribunal without any separate notice being given to the candidate or the agent as prescribed in the proviso. Once the Tribunal in E.P.135/1952 found that the Agent Sri K. P. Kariyappa, had committed corrupt practices and gave a finding in this respect in their judgment, the matter became final and there was no need at all for further proceedings under Section 99. It was accordingly urged that merely because the Tribunal wrongly understood the law on the point and felt not called upon to take any action against the agents under Section 99 of the Representation of the People Act, it cannot be said that the conclusions arrived at by the Tribunal in the judgment are not findings within the meaning of Section 7(a) of the Act. Section 98 runs as follows:—

"(1) At the time of making an order under Section 98 the Tribunal shall also make an order—

(a) where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording—

(i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance

of, any candidate or his agent at the election, and the nature of that corrupt or illegal practice; and

- (ii) the names of all persons, if any, who have been proved at the trial to have been—guilty of any corrupt or illegal practice, together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have been incurred in this connection under Sections 141 to 143;

* * *

Provided that no person shall be named in the order under sub-clause (ii) of Clause (a) unless—

- “(a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.”

While sub-clause (i) of clause (a) deals with the finding whether any corrupt or illegal practice has or has not been proved to have been committed by or with the connivance of the candidate or his agent at the election, sub-clause (ii) of clause (a) deals with the persons who have been proved at the trial to have been guilty of any corrupt or illegal practice. The finding in sub-clause (i) of clause (a) is necessary to determine the validity or otherwise of the election. Sub-clause (ii) of clause (a) is necessary to make the persons concerned suffer the disqualification specified in Section 7(a). The finding under sub-clause (i) of clause (a) is one of the necessary findings to be given for granting or refusing the relief asked for in the election petition which is about the validity or otherwise of the election. When an election petition is founded on a charge of corrupt practice on the part of the candidate or his agent, that becomes the subject matter of the enquiry in the petition itself. It is quite in accordance with law to arrive at such a finding without any specific notice to the agent concerned when he is not made a party to the election petition. It is however clear that such a finding binds only the parties to the petition who had notice of it and not other persons. When action is intended to be taken against persons other than the parties to the petition, the matter is covered only by sub-clause (ii) of clause (a) and notice becomes necessary. The law on this point is now settled by the decision of the Supreme Court in *Tirath Singh vs. Bachittar Singh and others* (C.P. No. 21/1955). A certified copy of this judgment has been produced before us. The point canvassed in the appeal before the Supreme Court was that even a finding against a candidate that he is guilty of corrupt practice could not be given by a Tribunal except after notice prescribed in the proviso to Section 99(1), though the candidate had notice of the election petition in which the allegation of corrupt practice had been made and he had every opportunity of defending himself in respect of such allegation. The Supreme Court did not accept this contention and stated the law on the point as follows:—

“Our conclusion is that while the persons to be named under Section 99(1) (a) (ii) would include both parties to the petition as well as non-parties, the proviso thereto applies only to persons who had no opportunity of taking part in the trial, and that, therefore, whether notice should issue under the proviso will depend on whether the person had an opportunity to cross-examine witnesses who had given evidence against him and to adduce his own evidence. This conclusion is in accord with law in England. Under Section 140, sub-clause (1) of the Representation of the People Act, 1949, an election Court has to state in its report the names of all persons who are found guilty of corrupt and illegal practice but “in the case of some one who is not a party to the petition nor a candidate on behalf of whom the seat or office is claimed by the petition”, the Court has to issue notice to him, give him an opportunity of being heard by himself, and calling evidence in his defence. It was suggested for the appellant that the law as enacted in Section 99 makes a deliberate departure from that under Section 140(1) of the English Act. The difference in the wording between the two sections is due to the difference in the arrangement of the topics of the two statutes, and there is no reason to hold that with reference to the substance of the matter, there was any intention to

depart from the English law on the subject; nor is there any reason therefore."

We cannot, therefore, accept the argument that sub-clause (ii) of clause (a) of section 99(1) does not apply to a candidate or his agent and that no notice is necessary to the agent under the proviso, even though such agent is not impleaded as a party to the election petition. It would, in our opinion, be opposed to the well known principles of natural justice to hold that a finding against a person that he is guilty of a corrupt practice can be given so as to bind him without giving him due notice of the charge against him and without giving him an opportunity of defending himself.

11. After the judgment of the Supreme Court above referred to was brought to our notice, the respondent filed a further statement on 12th November 1955 wherein it was alleged that though the original petitioner Sri K. P. Kariyappa was not a party to the proceedings in E.P. No. 135 of 1952, he had notice of the allegations made against him as agent of Sri S. M. Mariyappa and was actually instructing him in court in order to help him to have the witnesses deposing against Sri K. P. Kariyappa thoroughly cross-examined. It was urged, therefore, that Shri K. P. Kariyappa had every opportunity and had as a matter of fact utilised that opportunity to disprove the allegations against him by appearing as a witness on behalf of Shri S. M. Mariyappa and emphatically denying all the allegations made against him. On behalf of the intervening petitioners it was denied that Sri K. P. Kariyappa had notice of the allegations made against him in E.P. No. 135/1952 or that Sri K. P. Kariyappa was assisting in the cross-examination of witnesses during the trial. A question of fact being thus raised, opportunity was given to both the parties to adduce evidence. On behalf of the respondent four witnesses were examined, and on behalf of the intervening petitioners one witness was examined. Shri K. P. Kariyappa was himself examined as a court witness. The gist of the evidence of the four witnesses examined on behalf of the respondent is that Sri K. P. Kariyappa was attending on almost every day of hearing of E.P. No. 135/1952 and that he was assisting Sri S. M. Mariyappa in defending the case. The witness examined on behalf of the intervening petitioner is Sri A. C. Byrappa, advocate who appeared for Sri S. M. Mariyappa in E.P. No. 135/1952. Though it may be rather difficult to believe that this witness did not enquire Sri Kariyappa as to what he intended to depose before he was examined as first R.W. 68, his evidence is clear that he was having no instructions from Sri Kariyappa himself to defend him as regards the allegations made against him. If Sri Kariyappa assisted Sri Mariyappa in defending the charges of corrupt practices, we can not conclude that Sri Kariyappa had sufficient opportunity to defend himself as against the charges made against him. Before Kariyappa is found guilty of corrupt practice so as to make him suffer the disqualification under law, he must be given an opportunity of defending himself directly and he must have had a right to get his witnesses examined. In our opinion the evidence adduced does not disclose that he had any such right during the trial of the election petition No. 135/1952.

12. We therefore, hold on the additional issue that Sri Kariyappa had no notice and no opportunity of defending himself against the allegation of corrupt practice found against him in E.P. No. 135/1952.

13. Consequently, we find on the first issue that the order of the Election Tribunal in E.P. No. 135/52 did not entail disqualification of Sri K. P. Kariyappa for membership of the Mysore State Legislative Assembly under Section 7(1) of the Representation of the People Act.

14. It necessarily follows that the rejection of the nomination paper of Sri K. P. Kariyappa by the Returning Officer was improper and not in accordance with law. This is our finding on the second issue.

15. The next issue to be considered is whether the election of the respondent is liable to be set-aside on this ground. Under Section 100 (1) (c) "if the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void." In the present case there were only two candidates, viz. Sri K. P. Kariyappa and the respondent. The rejection of the nomination paper of Sri K. P. Kariyappa resulted in Sri H. M. Channabasappa being declared as "duly elected". If the nomination paper of Sri K. P. Kariyappa had not been rejected, the result of the election might have been otherwise. It, therefore, follows that the result of the election in this case has been materially affected by the improper rejection of the nomination paper of Sri K. P. Kariyappa. A doubt has been raised that because Sri K. P. Kariyappa, though the challenged

the election by filing the petition under Section 81 of the Representation of the People Act, 1951, the fact that he subsequently withdrew his petition and that the petition is continued only by other persons who were electors under Section 110(3) (c), it is possible to hold that the result of the election is not materially affected. We do not think that the withdrawal of the petition by Sri K. P. Kariyappa has any relevancy in determining the question whether the result of the election has or has not been materially affected by the rejection of the nomination paper of Sri K. P. Kariyappa. Section 81 of the Representation of the People Act gives to any elector a right to question the validity of an election on one or more of the grounds specified in sub-sections 1 and 2 of Section 100. The elector, therefore, has a right to file a petition questioning the validity of an election when the result of the election has been materially affected by the improper acceptance or rejection of any nomination. This right is not dependent on the question whether the candidate whose nomination paper has been rejected has or has not accepted the rejection. Even if the candidate does not challenge the rejection of his nomination paper the law gives the right to challenge to every elector in the Constituency. The law no doubt does not give the elector a right to compel a person to stand as a candidate against his will nor can an elector prevent a candidate from withdrawing from his candidature under Section 37 of the Representation of the People Act. The withdrawal of an election petition by a candidate whose nomination paper is rejected on improper grounds cannot be deemed to be the same as a withdrawal of his candidature under Section 37 referred to above. We, therefore, find on the third issue that the result of the election in this case has been materially affected by the rejection of the nomination paper of Sri K. P. Kariyappa and that therefore the election of the respondent has to be declared as "wholly void".

16. An objection is raised on behalf of the respondent that what is prayed for in the petition is for a declaration that the election of the returned candidate is void a relief falling under clause (a) of Section 84 of the Representation of the People Act and that therefore a relief under clause (c) of the section cannot be granted in this case. We find no substance in this objection. The prayer in para 8 of the petition is as follows:—

"Wherefore it is prayed that this petition may be allowed with costs, declaring the rejection of the nomination paper of the petitioner K. P. Kariyappa to the bye-election from Periyapatna Constituency to the Mysore State Legislative Assembly and the declaration of the respondent as having been duly elected therefrom as per Gazette Notification as illegal and the election may be declared as void in the interests of justice."

The grounds urged in the petition are ground falling under sub-clause (c) of Section 100(1) and not falling under sub-clauses (a), (b) or (c) of sub-section (2) of Section 100. The mere omission of the word "wholly" in the prayer portion is not, in our opinion, of material consequence. Even otherwise any defect in the relief claimed under Section 84 cannot be a ground for dismissing the petition, as Section 84 is not one of the sections included in Section 85 of the Representation of the People Act. (See in this connection the decision of the Supreme Court in Jaggannath vs. Jaswath Singh reported in 1954, Vol. 17 Supreme Court Journal, 257).

17. For the foregoing reasons we declare under Section 98 of the Representation of the People Act, 1951, that the election to the Legislative Assembly, Mysore, from the Periyapatna Constituency in which the respondent was duly declared elected is "wholly void."

In the circumstances of the case and in view of the fact that the point involved for decision was one of law and not free from doubt, there will be no order as to costs.

Dictated to the stenographer, transcribed and then pronounced in open court on 31st March 1956.

(Sd.) T. GURUNANJIAH, *Chairman.*

(Sd.) N. R. JAYA RAO, *Judicial-Member.*

(Sd.) E. KANAKASABHAPATHY, *Advocate-Member.*

The 31st March 1956.

[No. 82/30/54/6298.]

By Order,

P. S. SUBRAMANIAN, *Secy.*